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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARYBefore the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of:	)	
Implementation of the Cable	)	
Television Consumer Protection	)	MM Docket No. <u>92-259</u>
and Competition Act of 1992	)	
	)	
Broadcast Signal Carriage Issues	)	
	)	
Reexamination of the Effective	)	
Competition Standard for the	)	MM Docket No. 90-4
Regulation of Cable Television	)	
Basic Service Rates	)	
	)	
Request by TV14, Inc. to Amend	)	
Section 76.51 of the Commission's	)	
Rules to Include Rome, Georgia	)	MM Docket No. 92-295
in the Atlanta, Georgia	)	RM-8016
Television Market	)	

OPPOSITION OF THE  
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) submits this Opposition to the Petition for Reconsideration of the National Cable Television Association (NCTA), filed May 3, 1993. This and other petitions were placed on Public Notice at 58 Fed. Reg. 29582 on May 21, 1993.<sup>1</sup>

USTA addresses only one issue in the NCTA Petition - NCTA's continuing attempt to legitimize cable operators' exercise of their established market dominance to gain exclusivity in areas of programming that are most desirable, and to prevent competitors from carrying that programming.

<sup>1</sup> USTA sympathizes with the petition for reconsideration of Community Antenna Television Association (CATA) filed May 3, 1993, regarding the merit of and apparent conflict in the small system exemption provision, which CATA views as a technical drafting correction. USTA will not address it further here.

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Here, NCTA asks the Commission to change its decision in ¶ 179 of the Report and Order to permit exclusive retransmission consent agreements between television broadcast stations and cable operators. NCTA Petition at 22.

In its Petition, NCTA seeks new legitimization for cable operators to limit access to broadcast programming that, under the broadcast "public interest" standard, historically has been required to be available without charge over the air to all television viewers within the station's broadcast area. That is the essence of "free TV." Under NCTA's proposal, cable operators would receive authorization to capture broadcast station signals on an exclusive contractual basis. Whether or not a broadcast signal loses its "public interest" character and obligations outside of the station's area of service, the Commission should not permit the same type of exclusivity and its effects that the Congress frowned upon when Congress adopted section 628 and related sections of the 1992 statute.

Congress intended to prohibit exclusive programming carriage agreements that would result in discrimination and the exertion of undue influence. Were the types of signals identified in the NCTA Petition to be captured on an exclusive basis, particularly in areas around a station's home market, there would be a significant likelihood of the discrimination and undue influence Congress feared.

Because of the one-sided nature of the current cable television marketplace, permitting additional exclusive retransmission agreements is not the means by which the Commission can promote cable television competition, diversity or consumer access to information. See First Report and Order, In the Matter of Development of Competition and Diversity in Video Programming Distribution and Carriage, MM Docket No. 92-265, released April 30, 1993.

NCTA itself recognizes that the presumption in the 1992 statute is against exclusivity. NCTA Petition at 23. Apparently, it cannot wait even the three year period set out in the Report and Order, after which time the Commission promises to revisit the issue. Perhaps cable operators see this approaching three year period as a good time to use the opportunity to take advantage of exclusivity arrangements. This part of the NCTA Petition should be denied.

Respectfully submitted,

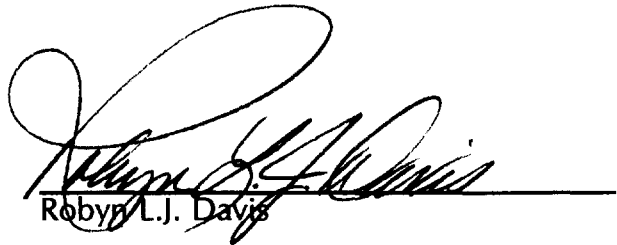
UNITED STATES TELEPHONE ASSOCIATION

BY

Mark Mitchell

**CERTIFICATE OF SERVICE**

I, Robyn L.J. Davis, do certify that on June 7, 1993 copies of the foregoing Opposition of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.



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